

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

AT HUNTINGTON

DREW C. FITZPATRICK, by
His father, Roland T. Fitzpatrick,

Plaintiff,

V.

CIVIL ACTION NO. 3:03-0583

DAVID STEWART, et. al.,

Defendants,

ORDER

On June 6, 2007, the Magistrate Judge entered an Order directing Roland Fitzpatrick to obtain counsel to represent Drew Fitzpatrick, a minor, in this action. The Magistrate Judge observed that Mr. Fitzpatrick is not an attorney and cannot represent his son, Drew. The Magistrate Judge gave him 30 days to secure counsel. On July 9, 2007, the Magistrate Judge granted Mr. Fitzpatrick's motion for an extension of time to secure counsel, giving him until August 3, 2007. Having apparently failed to obtain counsel by that date, Mr. Fitzpatrick filed a Notice of Appeal on behalf of Drew Fitzpatrick as to the June 6, 2007 Order. This Court denied that appeal on August 16, 2007, explaining the necessity of obtaining counsel to represent Drew Fitzpatrick to litigate the claim and providing another extension, this time of fourteen days. Once again, Mr. Fitzpatrick failed to obtain counsel. Thereafter, on September 11, 2007, the Magistrate Judge entered Findings and Recommendation noting the failure of Mr. Fitzpatrick to secure counsel to represent Drew Fitzpatrick and recommending dismissal. On September 24, 2007, Mr. Fitzpatrick filed Written Objection to the Findings and Recommendation. He seeks a stay of the proceedings because Drew

Fitzpatrick was committed on August 9, 2007, to a juvenile treatment facility by order of the Circuit Court of Cabell County, West Virginia.

The Court **DENIES** the Plaintiff's objection, **ADOPTS** the Findings and Recommendation and **DISMISSES** this action. Mr. Fitzpatrick has had ample time to obtain counsel but failed to do so. He cannot act as counsel for Drew Fitzpatrick and the Court has given him an extended period to obtain counsel. Drew's commitment to a treatment facility occurred on August 9, 2007, after the expiration of the second extension. Mr. Fitzpatrick received the Court's August 16, 2007 Order but failed to obtain counsel within the additional extension and only now raises Drew's August 9 commitment as an excuse. The Court is not persuaded that Mr. Fitzpatrick used reasonable diligence to obtain counsel.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented parties.

ENTER: September 26, 2007

A handwritten signature in black ink, appearing to read 'Robert C. Chambers', is written over a horizontal line.

ROBERT C. CHAMBERS
UNITED STATES DISTRICT JUDGE